

IN THE COURT OF APPEALS OF IOWA

No. 0-333 / 10-0426
Filed May 26, 2010

**IN THE INTEREST OF T.I. and S.I.,
Minor Children,**

**E.M.I., Father,
Appellant.**

Appeal from the Iowa District Court for Dubuque County, Thomas J. Straka, Associate Juvenile Judge.

A father appeals the termination of his parental rights. **AFFIRMED.**

Matthew L. Noel of Blair & Fitzsimmons, P.C., Dubuque, for appellant father.

MaryBeth P. Fleming, Dubuque, for appellee mother.

Thomas J. Miller, Attorney General, Kathrine S. Miller-Todd, Assistant Attorney General, Ralph Potter, County Attorney, and Jean A. Becker, Assistant County Attorney, for appellee State.

Whitney R. Jacque of O'Connor & Thomas, Dubuque, for minor children.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.**I. Background Facts and Proceedings**

This family came to the attention of the Iowa Department of Human Services (DHS) in late May 2009 as a result of a domestic abuse incident that occurred between Jennifer¹ and Eugene in front of their two children, Susie and Tyler. At that time, Jennifer reported that Eugene had been physically abusive to the children on numerous occasions. Eugene has a history of domestic abuse and drug and alcohol abuse.

DHS provided voluntary services until an ex parte removal order was issued on June 26, 2009, as a result of Jennifer leaving the children unsupervised or in the care of inappropriate people. Eugene was arrested for violation of a protective order issued after the May incident. The children were first placed in foster care but were moved to the home of their maternal grandparents in August 2009.

After a hearing, both children were adjudicated children in need of assistance (CINA) on August 28, 2009. Eugene began engaging in reunification services on August 27, 2009. However, because of Jennifer's allegations that Eugene severely abused the children and care providers' own conclusions that both children showed symptoms of being traumatized from abuse, care providers decided that Eugene needed to be reintroduced to the children, especially Tyler, in a safe and therapeutic environment. Tyler and his maternal grandmother began weekly therapy on October 20, 2009. On November 24, 2009, Eugene was introduced into the session for a short time. During the seventy-two hour

¹ Jennifer's parental rights are not at issue on appeal.

time period after this session, Tyler showed signs of distress and behaved atypically, acting more aggressive and hyperactive than usual. DHS caseworker Carrie Habel noted that when 'dad' was mentioned in conversation, Tyler verbalized "NO!" Following this session, Jennifer Hoyer at Crossroads Counseling Center recommended that contact between Tyler and Eugene be suspended until Tyler had an opportunity to process his thoughts and feelings regarding Eugene.

On December 3, 2009, Eugene began visits with Susie that were supervised by Randi Rusk of Families First. On January 13, 2010, Eugene filed a motion for visitation, asserting that he was only having visits with Susie and that there had not been enough time to assess what parenting issues he may have. Eugene also filed a motion for continuance, alleging he needed more time with Tyler before addressing permanency. The juvenile court denied Eugene's motion for continuance and motion for visitation, stating visitation between the children and their parents would remain at the discretion of DHS.

On January 26, 2010, Hoyer reintroduced Eugene to Tyler's therapy sessions. During the session, Tyler showed signs of significant anxiety and distress. He behaved in a withdrawn and subdued manner. Tyler's demeanor changed remarkably once Eugene was no longer present. Hoyer recommended that Eugene and Tyler not have contact, even supervised contact, outside of a therapeutic setting.

Randi Rusk stated that Tyler displayed fear when he knew he was going to visit his father. She also noted that the children were subdued during visits with their father and their behavior after visits was concerning. Susie would not

allow anyone to hold her following interactions with Eugene and would cry for long periods of time.

Eugene was cooperative during visits and attended sessions when allowed. However, he continually denied any history of abuse of the children or their mother. He failed to follow through on recommendations for therapy for post-traumatic stress disorder resulting from traumatic events in his childhood and failed to acknowledge his substance abuse issues. He was unemployed and homeless during the CINA proceedings and at the time of the termination trial.

On February 4, 2010, the State filed a petition to terminate Eugene's parental rights. After a hearing on the matter, the district court terminated Eugene's parental rights pursuant to Iowa Code section 232.116(1)(h) (2009). Eugene appeals, arguing: (1) DHS did not extend reasonable efforts to reunify him with his children; and (2) the juvenile court erred in finding clear and convincing evidence that additional time for reunification efforts would be detrimental to the minor children.

II. Standard of Review

We review termination proceedings de novo. *In re R.E.K.F.*, 698 N.W.2d 147, 149 (Iowa 2005). The grounds for termination must be supported by clear and convincing evidence. *In re T.B.*, 604 N.W.2d 660, 661 (Iowa 2000). Our primary concern is the child's best interests. *In re J.L.W.*, 570 N.W.2d 778, 780 (Iowa Ct. App. 1997).

III. DHS Reasonable Efforts

The State argues this issue was not preserved. Assuming without deciding that the issue was properly preserved, we find DHS made reasonable

efforts to reunite Eugene with his children. “Visitation between a parent and child is an important ingredient to the goal of reunification. However, the nature and extent of visitation is always controlled by the best interests of the child.” *In re M.B.*, 553 N.W.2d 343, 345 (Iowa Ct. App. 1996) (citations omitted). Eugene’s visits with the children were limited at the recommendation of several professionals working with the children in play therapy and other family services given the history of abuse and violence in this family. Care providers monitored the children’s behavior during and shortly after visits with Eugene to determine when the children could safely visit with their father. Providing for the best interests of the children warranted limiting Eugene’s parental visits in light of his reluctance to pursue counseling and to acknowledge the consequences of his actions on the children.

IV. Additional Time to Continue Reunification Efforts

Eugene also argues the juvenile court should have granted him a time extension to continue reunification efforts. Eugene acknowledged that the children could not be returned to him at the time of trial. When asked when he would be able to care for the children, he testified, “I don’t know if I have an answer for that.” “Children simply cannot wait for responsible parenting.” *In re L.L.*, 459 N.W.2d 489, 495 (Iowa 1990).

Jennifer testified that Eugene physically abused both children on several occasions. Care providers that worked with the children testified that both children showed symptoms of being traumatized from abuse. However, Eugene consistently denied that there was violence in the home. A parent must acknowledge and recognize the occurrence of abuse before any meaningful

change can take place. *In re H.R.K.*, 433 N.W.2d 46, 50 (Iowa Ct. App. 1988). “[W]hen a parent is incapable of changing to allow the child to return home, termination is necessary.” *In re T.T.*, 541 N.W.2d 552, 557 (Iowa Ct. App. 1995).

Randi Rusk testified, “I do not think additional time will help. . . . [I]f he will not acknowledge any fault . . . I do not think that time will fix [problem] areas.” Because Eugene failed to acknowledge or recognize how the occurrence of abuse has affected his children, additional time would not resolve the problems in this case. We agree with the juvenile court that there was clear and convincing evidence to support termination of parental rights, that the State carried its burden to make reasonable reunification efforts, and that terminating Eugene’s parental rights is in the children’s best interests.

AFFIRMED.